

FACTUAL HISTORY

On September 10, 1987 OWCP accepted that appellant, then a 39-year-old letter carrier sustained employment-related temporary aggravation of ankylosing spondylitis. It expanded the acceptance of the claim to include permanent aggravation of ankylosing spondylitis on June 21, 1988. OWCP also accepted thoracic or lumbar spondylosis with myelopathy.²

In July 1989, appellant began modified duty as a letter carrier for four hours per day and received appropriate wage-loss compensation. By decisions dated August 11, 1989 and June 10, 1991, OWCP determined that this position fairly and reasonably represented appellant's wage-earning capacity and reduced his compensation accordingly. On April 14, 1994 appellant filed a recurrence of disability claim (Form CA-2a), stating that he could no longer work. OWCP accepted the recurrence claim, and placed appellant on the periodic compensation rolls.

Appellant came under the care of Dr. Charles R. Arkin, Board-certified in internal medicine and rheumatology. In 1995, OWCP authorized the purchase of a hot tub that was replaced in 2003. Appellant underwent physical therapy several times annually, authorized through October 22, 2015.

In a report dated January 31, 2017, Dr. Arkin noted seeing appellant in follow-up for ankylosing spondylitis. He described appellant's complaints of neck and low back pain that radiated into his arms and legs, and noted that he had recently been diagnosed with early Parkinsonism with a mild right hand tremor. Dr. Arkin listed appellant's medications and noted findings of tenderness to spinal examination and severely restricted cervical and lumbar range of motion. Diagnoses included spinal stenosis and ankylosing spondylitis of multiple sites in the spine. Dr. Arkin recommended six weeks of physical therapy, three times weekly, and a return visit in two months. He also referred appellant for a physical medicine and rehabilitation evaluation.

By letter dated February 8, 2017, OWCP asked that appellant's physician provide an opinion regarding appellant's work-related conditions and any disability due to the accepted conditions. In a February 16, 2017 response, Dr. Arkin noted that appellant had been under his care since 1981 when he was seen for severe back pain and was diagnosed with ankylosing spondylitis which had continued to worsen without improvement. He advised that appellant had been totally disabled due to the condition since 1994 and would not recover. Dr. Arkin concluded that appellant's work permanently and irreversibly made his ankylosing spondylitis worse.

In March 18, 2017 correspondence, appellant maintained that physical therapy helped him to get out of chairs and his bed without assistance, and that medical literature supported that it decreased the pain and symptoms of ankylosing spondylitis. He indicated that he was 100

² The record indicates that appellant has service-related hearing loss, post-traumatic stress disorder (PTSD), a paraspinal nerve condition, Parkinson's disease, and prostate cancer, for which he receives benefits from the Department of Veterans Affairs (VA).

percent disabled by the VA for PTSD,³ and that the stress of dealing with OWCP aggravated that condition.

In correspondence dated March 22, 2017, OWCP noted that it had authorized physical therapy for an extended period of time and advised appellant of the medical information needed to authorize continued physical therapy. In a March 22, 2017 report, received by OWCP on April 3, 2017, Dr. Arkin advised that appellant's accepted ankylosing spondylitis was totally disabling and would not improve but that physical therapy, massage therapy, electric stimulation, and ultrasound therapy helped him maintain his activities of daily living and reduced his pain level. He further noted that appellant could no longer take NSAID medication due to loss of kidney function.

On April 4, 2017 OWCP referred the case record to its medical adviser for an opinion on whether the requested physical therapy was medically necessary to treat the accepted conditions. In an April 20, 2017 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon and OWCP medical adviser, noted his review of a statement of accepted facts and medical record. He indicated that the recommended physical therapy was causally related to the accepted condition, noting that it was often used to treat back pain, but that the recommended physical therapy was not medically necessary. Dr. Fellars explained that no functional gains had been outlined as a result of physical therapy, noting that the record did not specially explain how it would improve appellant's activities of daily living. He advised that appellant should be engaged in a home exercise program and indicated that current studies recommended an active physical therapy program, not passive modalities as were recommended in this case.

By decision dated April 20, 2017, OWCP denied appellant's request for authorization of physical therapy.

On May 16, 2017 appellant requested reconsideration. He indicated that he could no longer utilize his hot tub because he could no longer get in and out of it safely. Appellant also indicated that because his chest did not expand normally it was difficult to perform home exercises. He requested that OWCP furnish a motorized bed.

In a May 3, 2017 report, Dr. Arkin advised that he began treating appellant for ankylosing spondylitis in 1981, and that he continued to have severe pain, especially in the low spine area, complicated by moderate disc bulging and facet arthritis in the thoracic spine. He repeated appellant's medications and examination findings. Dr. Arkin indicated that appellant received physical therapy once or twice a year which decreased some of his neck and back pain, and that he tried to do home exercises on a fairly regular basis. He advised that with physical therapy, it was easier for appellant to turn in bed and be more active at home. Dr. Arkin related that appellant felt that physical therapy helped him breathe a little easier because he had marked restriction of the chest wall secondary to the ankylosing spondylitis. He referred appellant for an orthopedic evaluation, noting that appellant could be a candidate for a block. On May 4, 2017 Dr. Arkin indicated that, since the beginning of appellant's ankylosing spondylitis diagnosis, he had been doing home exercises consisting of utilizing heating pad, ice packs, a transcutaneous electrical nerve stimulation (TENS) unit, and an extended hand held massager, and these helped

³ *Supra* note 2.

him to function daily and not be totally incapacitated due to pain. He advised that appellant was no longer able to safely get in and out of his hot tub due to several slips and near-falls, and that his adjustable bed was no longer functional such that he had to sleep in a recliner since he could not lie flat in a bed. Dr. Arkin opined that physical therapy provided relief during a severe flare, which occurred once or twice a year, noting that this helped to make movements like turning over in bed, getting out of a chair, and walking easier, and also helped appellant breathe easier due to the marked restriction of the chest wall secondary to ankylosing spondylitis.

In an August 10, 2017 decision, OWCP denied modification of its prior decision. It noted that the evidence submitted was insufficient because it did not clearly explain how physical therapy would increase function or decrease appellant's level of disability.

LEGAL PRECEDENT

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.⁴ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁵

Section 10.310(a) of OWCP's implementing regulations provides that an employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.⁶ OWCP procedures provide that nonmedical equipment such as waterbeds, saunas, weight-lifting sets, exercise bicycles, *etc.*, may be authorized only if recommended by the attending physician and if OWCP finds that the item is likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁷

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.⁸ OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal.

⁴ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁵ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ 20 C.F.R. § 10.310(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); *see also* Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.17.h (June 2014); *D.J.*, Docket No. 13-1637 (issued December 16, 2013).

⁸ *See D.K.*, 59 ECAB 141 (2007).

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁹

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of continued physical therapy. OWCP initially accepted appellant's claim in 1987. The accepted conditions are permanent aggravation of ankylosing spondylitis and thoracic or lumbar spondylosis with myelopathy.

Appellant, who had been working four hours of modified duty daily, stopped work completely in 1994 and was placed on the periodic compensation rolls. He had received physical therapy several times a year beginning in 1988, and last authorized through October 22, 2015. On January 31, 2017 Dr. Arkin, an attending rheumatologist, recommended physical therapy, three times per week for six weeks. In merit decisions dated April 20 and August 10, 2017, OWCP denied authorization for continued physical therapy. OWCP found the weight of the medical evidence rested with the opinion of Dr. Fellars, its medical adviser.

In his April 20, 2017 report, Dr. Fellars indicated that, while the recommended physical therapy was causally related to the accepted condition, it was not medically necessary. He indicated that no functional gains had been outlined as a result of physical therapy, noting that the record did not specially explain how it would improve appellant's activities of daily living. Dr. Fellars advised that appellant should be engaged in a home exercise program, not passive modalities as were recommended in this case.

In reports dated March 2, May 3, and 4, 2017, Dr. Arkin advised that appellant's accepted condition was totally disabling and would not improve. He opined that physical therapy once or twice a year, including massage therapy, electric stimulation, and ultrasound therapy, decreased some of his neck and back pain, and helped him maintain his activities of daily living. It assisted in movements such as turning over in bed, getting out of a chair, and walking, while also helping appellant breathe easier.

The Board finds, however, that Dr. Arkin did not provide a sufficient explanation as to how the continued physical therapy would reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.¹⁰

For these reasons, OWCP did not abuse its discretion in denying appellant's request to authorize continued physical therapy. It explained that the medical evidence submitted provided insufficient explanation for the necessity of continued physical therapy and found that the weight of the evidence rested with Dr. Fellars, who advised that the requested physical therapy was not

⁹ *Minnie B. Lewis*, 53 ECAB 606 (2002).

¹⁰ *Supra* notes 4 and 5.

medically necessary. The Board finds that it was not unreasonable for OWCP to deny authorization for continued physical therapy.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant authorization for physical therapy.

ORDER

IT IS HEREBY ORDERED THAT the August 10 and April 20, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 23, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *D.K., supra* note 8.